



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/928,667	08/13/2001	Oleg M. Khodko	1086.2004-002	6418
21005	7590	07/05/2006	EXAMINER	
HAMILTON, BROOK, SMITH & REYNOLDS, P.C. 530 VIRGINIA ROAD P.O. BOX 9133 CONCORD, MA 01742-9133			WALSH, JOHN B	
		ART UNIT	PAPER NUMBER	
		2151		

DATE MAILED: 07/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/928,667	KHODKO ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	John B. Walsh	2151	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

1) Responsive to communication(s) filed on 18 April 2006.  
 2a) This action is **FINAL**.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

4) Claim(s) 1,4-14 and 17-26 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1,4-14 and 17-26 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date: _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date: _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 4, 5, 10-14, 17, 18 and 23-26 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,721,286 to Williams et al.

As concerns claims 1 and 14, Williams et al. '286 disclose transmitting from a client (personal computer, column 1, lines 10-15, sender/receiver) to a server (storage device, column 1, lines 10-15, sender/receiver) a request to establish a connection (column 17, lines 50-53, column 16, lines 49-50); iteratively (a) maintaining the connection in the absence of a substantive message (column 19, lines 4-16), wherein maintaining the connection includes transmitting a single character indicator pre-established to indicate a non-substantive message from the server to the client at short intervals (column 19, lines 4-16; column 22, lines 17-66); and (b) transmitting from the server to the client a substantive message upon existence of the substantive message at the server (column 17, lines 17-27); the single character indicator being outside of and separate from a substantive message (column 19, line 9 – NUL message is a "substantive message")

As concerns claims 4 and 17, wherein the step of transmitting a substantive message further includes transmitting from the server to the client a predefined signal indicating existence at the server of the substantive message (figure 4: request to open message channel).

As concerns claims 5 and 18, further comprising the step of receiving at the server a client ready message indicating that the client is prepared to accept the substantive message (figure 4: acknowledge).

As concerns claims 10 and 23, wherein the request to establish the connection includes an identifier that uniquely represents a current client application (column 71, lines 52-55).

As concerns claims 11, 12, 24 and 25, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

As concerns claims 13 and 26, wherein the step of transmitting a substantive message further includes the server exchanging substantive messages between two clients and thereby providing instant messaging (figure 34).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 6-9 and 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,721,286 to Williams et al. as applied above.

Williams et al. teach data can be provided in all formats (column 5, line 50).

The particular protocol used, HTTP, HTML, JAVA and ActiveX control, are seen as an obvious design choice since the invention can be carried out with any one of a particular protocol and still operate effectively. The applicant has not provided evidence that the particular protocols are of paramount importance to the patentable operability of the invention.

***Response to Arguments***

5. Applicant's arguments filed April 14, 2006 have been fully considered but they are not persuasive.

The applicant argues Williams discloses a 16-bit wide field and not a single character indicator. The applicant's specification does not indicate the size, in bits, of the single character indicator. Therefore a 16-bit field could be reasonably interpreted as a single character indicator. Furthermore the applicant's specification does not indicate if the single character indicator is encapsulated within a packet, frame, and cell etc. that would include a header. The NUL messages of Williams perform the same function as the applicant's, keep-alive message. Furthermore, the size of the single character indicator has not been specifically recited in the claims or disclosed in the specification, such that the message of Williams, given the broadest reasonable interpretation, anticipates the applicant's invention.

As concerns claims 6-9 and 19-22, the particular protocol format for sending transmissions has been rejected as being an obvious design choice. The applicant has disclosed multiple embodiments wherein the transmissions are sent over one of a particular set of protocols (Applicant's disclosure - page 3, 17-19). Furthermore, the applicant has disclosed the transmission can be sent on anyone of the protocols (Applicant's disclosure -Page 9, lines 21-23)

that leads the examiner to reason that the particular protocol being used is not of a particular patentable importance to the operation of the invention. If the applicant disagrees and intends for the multiple embodiments to be treated as distinct independent inventions, it should be so indicated.

***Conclusion***

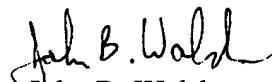
6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John B. Walsh whose telephone number is 571-272-7063. The examiner can normally be reached on Monday-Wednesday from 5:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zarni Maung can be reached on 571-272-3939. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



John B. Walsh  
Primary Examiner  
Art Unit 2151